

## Chapter 26 of the Acts of 2010

### AN ACT RELATIVE TO THE COLLECTION OF UNPAID MUNICIPAL FINES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

The General Laws are hereby amended by inserting after chapter 40T the following chapter:-

#### CHAPTER 40U MUNICIPAL FINES

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Municipal hearing officer”, a person appointed by the appointing authority of a municipality to conduct hearings of alleged code violations pursuant to this chapter.

“Unpaid charge”, an unpaid fine incurred as a result of a violation of a rule, regulation, order, ordinance or by-law regulating the housing, sanitary or municipal snow and ice removal requirement.

Section 2. This chapter shall take effect in a municipality upon its acceptance.

Section 3. A municipality that adopts this chapter shall, in the manner provided in this chapter adopt procedures for the payment of the municipal fines provided in this chapter and may revoke or rescind any such acceptance.

Section 4. The adoption of procedures for the payment of certain municipal fines under this chapter shall be by majority vote of the city council or town meeting.

Section 5. A municipality shall by ordinances and by-laws provide for the removal of snow and ice from sidewalks within such portions of the municipality as they consider expedient by the owner of land abutting such sidewalks. Such ordinances and by-laws shall determine the time and manner of removal and shall affix penalties, not exceeding \$200, for each such violation. Such ordinances and by-laws shall be specific as to the width of the area to be cleared and the standards for clearance.

Section 6. A municipality shall appoint a municipal hearing officer. The officer shall hear appeals of violation notices issued within the municipality. The municipal hearing officer may be the same person appointed as a municipal hearing officer pursuant to chapter 148A.

Section 7. A municipality may implement a system for the administrative disposition of noncriminal violations pursuant to section 21D of chapter 40.

Section 8. Every officer and inspector who takes notice of a violation of a rule, regulation, order, ordinance or by-law regulating the housing, sanitary or snow and ice removal requirement shall provide the offender with a notice forthwith, which shall be in tag form, to appear before the municipal hearing officer or the hearings officer's designee during regular office hours, not later than 21 days after the date of such

violation. All tags shall be prepared in triplicate or by the use of an automated ticketing device and shall be pre-numbered.

Section 9. The tag shall be affixed securely to the building or, for a building with an onsite professionally-managed property office, delivered to the office during normal business hours and shall contain, but shall not be limited, to: the date, time and place of the violation, the specific violation charged, the name and badge number of the officer or inspector and his division, a schedule of payment for established fines and instructions for return of the tag.

Section 10. Within 3 business days after completion of each shift, the officer or inspector shall give to his superior those copies of each notice of a violation issued during such shift. The superior shall retain and preserve 1 copy and shall, not later than the beginning of the next business day after receipt of the notice, deliver another copy to the municipal hearing officer before whom the offender has been notified to appear, unless the ticket was produced by an automated ticketing device, in which case no duplicate copies need be retained. The municipal hearing officer shall maintain a docket of all such notices to appear.

Section 11. The municipality shall, by ordinance or by-law, establish a schedule of fines for violations subject to this chapter committed within the municipality; provided, however, that all such fines shall be uniform for the same offense committed in the same zone or district, if any. A fine established under this chapter shall not exceed the maximum allowable amount under the relevant sections of the housing or sanitary code or municipal snow and ice removal requirement, excluding late fees.

Section 12. Where a notice of violation is issued for a code violation, the alleged violator, within 21 days, shall return the notice of violation by mail, personally or by an authorized person, to the municipal hearing officer and shall either: (1) pay in full the scheduled fine by check, postal note, money order or other legal tender; or (2) request a hearing before the municipal hearing officer. Each violation issued shall contain a statement explaining the procedure to adjudicate the violation by mail. Any amounts paid shall be payable to the municipality. If a fine remains unpaid for 21 days and no hearing has been requested, a letter shall be sent to the property owner of record's mailing address and, if appropriate to the local individual or property management company responsible for the maintenance of the property, with a processing fee of not more than \$10, notifying him that the fine shall be paid within 30 days after receipt of that notice unless within 14 days of receiving that notice the property owner requests a hearing before the municipal hearing officer and swears in writing under the pains and penalties of perjury that the property owner did not receive the notice of violation. If the fine remains unpaid after that 30 day period, additional penalties and interest may be attached. Thereafter, any fine and additional penalties and interest that may be attached and which remain unpaid shall become an additional assessment on the property owner's tax bill. Such amount and cost relative thereto may also be a lien upon such real estate as provided in section 42B of chapter 40. A municipality's determination of whether to place a lien on the property may involve the number of and the dollar amount of the violations on the property. The property owner of record shall be notified by certified mail of the lien on the property. No lien shall be removed without notice from the tax collector that all such matters have been disposed of in accordance with law. Additional charges equal to the amount required to file the lien and the amount required to release the lien shall be assessed against the owner of record for the purpose of ensuring that all costs associated with filing and release are recovered.

Section 13. Any person notified to appear before the municipal hearing officer, as provided herein may, without waiving the right to a hearing provided by this chapter and without waiving judicial review as provided in section 14 of chapter 30A, challenge the validity of the violation notice and receive a review

and disposition of the violation from the municipal hearing officer by mail. The alleged violator may, upon receipt of the notice to appear, send a signed statement of objections to the violation notice as well as signed statements from witnesses, police officers, government officials and other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any statements or materials sent to the municipal hearing officer for review shall have attached the person's name and complete address as well as the ticket number and the date of the violation. The municipal hearing officer shall, within 21 days after receipt of such material, review the material and dismiss or uphold the violation and notify the alleged violator by mail of the disposition of the hearing. If the outcome of the hearing is against the alleged violator, the municipal hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition conducted by mail shall be informal, the rules of evidence shall not apply and the decision of the municipal hearing officer shall be final, subject to any hearing provisions provided by this chapter or to judicial review as provided in said section 14 of said chapter 30A.

Section 14. Notwithstanding section 21D of chapter 40, a person who desires to contest a violation of any ordinance or by-law of a municipality alleged in a notice to appear, pursuant to violations issued by a municipality in accordance with said section 21D of said chapter 40, shall request in writing a hearing before a municipal hearing officer. The notice to appear shall be in the format specified in said section 21D of said chapter 40, except that the third copy of the notice shall be submitted to the municipal hearing officer unless the ticket was produced by an automated ticketing device.

If the alleged violator requests a hearing before the municipal hearing officer in a timely manner, the municipal hearing officer shall schedule a hearing not later than 45 days after receiving the hearing request. The municipal hearing officer shall duly notify the alleged violator of the date, time and location of the hearing. Hearings shall be held on at least 2 evenings each month. When a hearing notice is sent, the alleged violator shall be given an opportunity to request a rescheduled hearing date. The municipal hearing officer so designated shall not be an employee or officer of the department associated with the issuance of the notice of violation.

The municipal hearing officer shall receive annual training in the conduct of administrative hearings. The hearing and disposition shall be informal and shall follow the rules set forth in chapter 30A. Rules for judicial proceedings shall not apply. In conducting the hearing, the municipal hearing officer shall determine whether the violation occurred and whether it was committed by the person notified to appear.

Section 15. A person aggrieved by a decision of the municipal hearing officer may appeal to the district court, housing court or other court of competent jurisdiction pursuant to section 21D of chapter 40, on a form provided by the municipality, and shall be entitled to a de novo hearing before a clerk magistrate of the court. The court shall consider such appeals under a civil standard. The aggrieved person shall file the appeal within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.

Section 16. Any person who has received a notice of violation issued in accordance with this chapter who, within the prescribed time, fails to pay the same or fails to request a hearing before the municipal hearing officer or who fails to appear at the time and place of the hearing, shall be deemed responsible for the violation as stated in the notice of violation. Such finding of responsibility shall be considered prima facie evidence of the violation in a civil proceeding regarding that violation and shall be admissible as evidence in a subsequent criminal proceeding. If a person fails to appear at the scheduled hearing without good cause, the appeal shall be dismissed and the violator shall waive any further right of appeal. If the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be used by a municipality as prima facie evidence of the existence of a violation in any proceeding to suspend

or revoke any license, permit or certificate issued by such municipality relative to that building, structure or premises pending the correction of the condition.

Section 17. All fines, penalties or assessments in actions under this chapter shall be paid to the general fund of the municipality.

Section 18. In a municipality that has accepted this chapter, this chapter shall supersede any local ordinances or by-laws to the contrary.

*Approved, February 10, 2010.*

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## New law expands municipal fine authority



*February 12, 2010*

On Feb. 10, Gov. Deval Patrick signed legislation that expands local authority to collect unpaid fines, specifically those issued for violations of local statutes regulating sanitation, housing, and snow and ice removal.

The new local-option procedure (codified as M.G.L. Ch. 40U) is much like the one in place for hearings on parking citations. It will allow for appeals of citations outside the judicial system, allows penalties for late payments, and, through the automation of the ticketing system, allows the city or town to impose sanctions for failure to pay fines by restricting access to other municipal services.

As a final recourse, Chapter 40U allows municipalities to place a lien on a property "based upon the number of and/or the dollar amount of the violations on the property."

Cities and towns have had no recourse for collecting these types of unpaid fines except to file suit in Housing Court for each unpaid ticket. In the city of Boston, less than one-third of citations are paid, and the number of tickets issued each year continues to rise. Between 2006 and 2009, more than 87,000 citations were issued in Boston, with more than 48,000 unpaid or outstanding, representing more than \$4.9 million.

Prior to the enactment of this legislation (Chapter 26 of the Acts of 2010), cities and towns had to seek special legislative approval in order to implement a more aggressive collection procedure. The city of Lowell was granted such authority in 2002.

Written by MMA Senior Legislative Analyst Matthew G. Feher